

² 5 U.S.C. § 8101 *et seq.*

(2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after February 8, 2018 due to the accepted September 14, 2016 employment injury.

FACTUAL HISTORY

On September 16, 2016 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 14, 2016 she suffered a cervical strain, thoracic strain, and lumbar strain when falling forward when delivering a package while in the performance of duty. She stopped work on September 14, 2016.

On November 10, 2016 OWCP accepted the claim for lumbar spine sprain, cervical spine sprain, and thoracic spine sprain. It paid appellant wage-loss compensation benefits on the supplemental rolls from October 30 through December 10, 2016 and on the periodic rolls commencing December 11, 2016.

In a May 2, 2017 report, Dr. Daniel Orcutt, a Board-certified orthopedic surgeon, noted that appellant experienced pain in her lumbar spine extending down to her left leg after lifting mail on March 20, 2015. He indicated that she showed minimal improvement with physical therapy treatment. Dr. Orcutt noted that appellant experienced another work injury on September 14, 2016 when she fell while carrying a heavy package. He listed her medical treatment and diagnosed low back pain, low back strain, degeneration of the lumbar disc, sciatica, cervical radiculopathy, degeneration of the cervical disc, lumbar radiculopathy, degeneration of the lumbosacral disc, and inflammation of the sacroiliac joint. Dr. Orcutt opined that appellant's diagnoses were a direct result of her employment injury. He indicated that she was unable to return to her regular-duty work and would likely never be able to return to that level of work.

On October 31, 2017 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions to Dr. Howard Krone, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature of her accepted conditions, the extent of disability, and appropriate treatment.

Appellant submitted visit status reports, dated September 18 and November 1, 2017, from Dr. Orcutt who listed her work restrictions. She also submitted progress notes from Dr. Orcutt, dated November 1 and 27, 2017, who diagnosed low back pain, low back strain, degeneration of the lumbar intervertebral disc, sciatica, cervical radiculopathy, degeneration of the cervical intervertebral disc, lumbar radiculopathy, degeneration of the lumbosacral intervertebral disc, and inflammation of the sacroiliac joint.

In a December 6, 2017 report, Dr. Krone noted his review of the SOAF and appellant's medical record and provided examination findings. He advised that her work-related conditions had resolved. Dr. Krone opined that appellant did not have any residuals of the September 14, 2016 employment injury that would prevent her from returning to work as a rural carrier. He found that she did not require further treatment for residuals of the accepted employment injury. In an accompanying work capacity evaluation (Form OWCP-5c), Dr. Krone checked a box marked "Yes" to indicate that appellant was capable of performing her usual job without restriction.

In a December 12, 2017 visit status report, Dr. Orcutt noted no changes in appellant's work restrictions.

By notice dated December 20, 2017, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Krone's opinion that the September 14, 2016 accepted conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

OWCP subsequently received a December 12, 2017 progress note from Dr. Tracy Wimbush, a Board-certified specialist in emergency medicine, who diagnosed cervical radiculopathy and cervical spondylosis without myelopathy. It also received a visit status report and progress note, dated January 3, 2018, from Dr. Orcutt who noted no changes in appellant's symptoms and work restrictions.

In a letter dated January 19, 2018, counsel argued that OWCP failed to meet its burden of proof in proposing to terminate appellant's wage-loss compensation and medical benefits. He alleged that the SOAF was deficient as it did not adequately list her prior claims and preexisting conditions. Counsel further asserted that Dr. Krone's opinion lacked sufficient medical rationale and that it failed to address appellant's preexisting conditions and whether the accepted employment injury aggravated these conditions.

In a January 31, 2018 progress note, Dr. Orcutt examined appellant and noted no change in her symptoms.

By decision dated February 7, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 8, 2018, finding that the medical evidence submitted was insufficient to outweigh Dr. Krone's opinion. It further found that the report from Dr. Krone constituted the weight of the medical evidence.

Appellant subsequently submitted a September 18, 2017 progress note from Dr. Wimbush, who diagnosed cervical radiculopathy and cervical spondylosis without myelopathy.

On February 15, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant resubmitted hospital orders and records, dated September 14, 2016.

A telephonic hearing was held on July 11, 2018. During the hearing, counsel argued that Dr. Krone's second opinion was based on a deficient SOAF as it did not include information from two of appellant's other claims. He asserted that OWCP should administratively combine her case with her other claims as they were interrelated. OWCP's hearing representative afforded appellant 30 days to submit additional evidence.

In a July 11, 2018 report, Dr. Orcutt noted appellant's medical history. He opined that the September 14, 2016 employment injury contributed substantially to the development of chronic low back syndromes leading to further exacerbation of her lumbar spine degeneration and cervical spine degeneration. Dr. Orcutt diagnosed low back pain, low back strain, degeneration of the lumbar spine, sciatica, lumbar radiculopathy at L4-5, lumbar spondylosis at L3-5, degeneration of

the lumbosacral disc, inflammation of the sacroiliac joint, cervical radiculopathy at C6-7, cervical spondylosis at C4-7, and degeneration of the cervical disc. He noted that all of appellant's diagnoses were a direct result of the accepted employment injury. Dr. Orcutt opined that her medical conditions were static and would not improve over time. He indicated that it was likely that appellant's symptoms would progressively worsen and that she was unable to return to her regular-duty work.

By decision dated September 14, 2018, OWCP's hearing representative affirmed the February 7, 2018 termination decision, finding that Dr. Krone's opinion established that appellant's accepted conditions had ceased without residuals. It further found that Dr. Orcutt's newly submitted opinion created a conflict in the medical evidence and remanded the claim for further evidentiary development. The hearing representative noted that, on remand, OWCP should refer appellant and a complete SOAF to a referee physician to obtain a rationalized medical opinion on the issue of whether appellant's accepted employment injury had resolved.³

In an August 7, 2017 report, Dr. Wimbush noted that appellant was experiencing chronic cervical pain and numbness in the hands. She examined appellant and diagnosed cervical radiculopathy and cervical spondylosis without myelopathy.

On September 1, 2017 Dr. Wimbush performed a cervical medial branch block procedure and diagnosed cervical spondylosis without myelopathy.

In a November 21, 2018 report, Dr. Orcutt noted that appellant reported no change in her symptoms. He examined her and diagnosed lumbar sprain, sciatica, low back pain, low back strain, degeneration of the lumbar intervertebral disc, cervical radiculopathy, degeneration of the cervical intervertebral disc, lumbar radiculopathy, degeneration of the lumbosacral intervertebral disc, and inflammation of the sacroiliac joint.

In a letter dated November 26, 2018, counsel asserted that there was a conflict in the medical opinion evidence prior to the submission of Dr. Orcutt's July 11, 2018 report. He resubmitted a copy of a May 2, 2017 report from Dr. Orcutt who opined that appellant had worsening symptoms related to the accepted employment injury. Counsel argued that, since there was a conflict in the medical opinion evidence prior to the February 7, 2018 decision, her wage-loss compensation should be reinstated from the date of termination.

On December 17, 2018 OWCP referred appellant, an updated SOAF⁴, and a list of questions to Dr. Chad Kessler, a Board-certified orthopedic surgeon, for a referee examination to resolve the conflict of medical opinion evidence between Dr. Orcutt, appellant's treating physician, and Dr. Krone, the second opinion physician.

In a referee examination report, dated January 9, 2019, Dr. Kessler noted that he reviewed the medical record and SOAF. He examined appellant and opined that her accepted September 14,

³ OWCP also administratively combined OWCP File Nos. xxxxxx523, xxxxxx160, and xxxxxx031 with the present claim, OWCP File No. xxxxxx036, which served as the master file.

⁴ The SOAF listed all of appellant's other accepted claims.

2016 employment conditions had resolved. Dr. Kessler indicated that she did not have residuals related to her employment injuries and that she sustained a temporary aggravation of her injuries, which had resolved. He noted that appellant did not have any restrictions related to the September 14, 2016 employment injury. Dr. Kessler opined that she may have developed cervical myelopathy and recommended that she seek evaluation by a spine specialist and/or neurosurgeon. He indicated that appellant did not require further treatment related to her accepted cervical, thoracic, and lumbar strains. In an accompanying Form OWCP-5c, Dr. Kessler checked a box marked “Yes” to indicate that she was capable of performing her usual job without restriction.

By decision dated March 5, 2019, OWCP determined that appellant no longer had any residuals related to her accepted employment-related conditions or continued disability from work as a result of her September 14, 2016 employment injury or illness. Therefore appellant was not entitled to ongoing medical benefits and wage-loss compensation.

On March 11, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

A telephonic hearing was held on July 9, 2019. During the hearing, counsel argued that there was a conflict in the medical opinion evidence prior to the February 7, 2018 termination decision. He further contended that Dr. Krone’s second opinion was based on a deficient SOAF that did not include information related to appellant’s prior claims. Counsel also asserted that Dr. Kessler’s referee opinion did not offer medical rationale as to why appellant did not have continuing disability or residuals related to the accepted employment injury.

On July 25, 2019 appellant, through counsel, requested reconsideration. Counsel contended that there was a clear conflict in the medical opinion evidence prior to the February 7, 2018 decision based on a May 2, 2017 report by Dr. Orcutt. He therefore asserted that appellant’s wage-loss compensation be reinstated from the date of termination to March 5, 2019 when her compensation was once again terminated.

By decision dated September 24, 2019, OWCP’s hearing representative affirmed the March 5, 2019 decision.

By decision dated October 23, 2019, OWCP denied modification of the September 14, 2018 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee’s benefits.⁵ After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to

⁵ *R.H.*, Docket No. 19-1604 (issued October 9, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁸ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁹

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹⁰ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 8, 2018.

In his December 6, 2017 second opinion report, Dr. Krone reviewed the SOAF and appellant's medical record and provided examination findings. He found that the only diagnoses related to the employment injury were her cervical strain, lumbar strain, and sacroiliac strain. Dr. Krone noted that appellant's other diagnoses were degenerative in nature and were present prior to the employment injury. He advised that her work-related conditions had resolved and opined that she did not have any residuals of the employment injury that would prevent her from returning to work as a rural carrier. Dr. Krone indicated that sprains of the cervical spine, lumbar spine, and thoracic spine generally resolve within four to eight weeks. He noted that none of the imaging studies of record of appellant's lumbar spine and cervical spine demonstrated any acute changes.

The Board finds that Dr. Krone's opinion was conclusory in nature and did not contain sufficient medical reasoning to establish that appellant was no longer disabled due to her accepted

⁶ *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁷ *E.K.*, Docket No. 18-0835 (issued September 23, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018); *Del K. Rykert*, 40 ECAB 294-96 (1988).

⁸ *M.P.*, Docket No. 20-0024 (issued September 1, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁹ *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019); *Calvin S. Mays*, 39 ECAB 993 (1988).

¹⁰ 5 U.S.C. § 8123(a); *V.S.*, Docket No. 19-1792 (issued August 4, 2020); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹¹ *D.B.*, *supra* note 9; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

September 14, 2016 employment injury.¹² The factors that determine the probative value of medical evidence include the opportunity for and thoroughness of examination performed by the physician, the accuracy, or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed by the physician on the issues addressed to him by OWCP.¹³

Dr. Krone opined that appellant's sprains of the cervical spine, lumbar spine, and thoracic spine had resolved. He noted that these types of sprains generally resolve within four to eight weeks and indicated that none of the imaging studies of her lumbar spine and cervical spine demonstrated any acute changes. However, Dr. Krone failed to provide a well-rationalized opinion explaining how or whether the accepted September 14, 2016 employment injury contributed, in any way, to the preexisting, degenerative conditions that were diagnosed. The Board has explained that medical rationale is particularly necessary if appellant has a preexisting condition.¹⁴ Accordingly, Dr. Krone's conclusory opinion is insufficient to meet OWCP's burden of proof to terminate her wage-loss compensation and medical benefits.

The Board therefore finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.¹⁵

¹² See *A.C.*, Docket No. 19-1522 (issued July 27, 2020); *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *S.B.*, Docket No. 18-0700 (issued January 9, 2019); *S.J.*, Docket No. 17-0543 (issued August 1, 2017).

¹³ See *R.K.*, Docket No. 19-1980 (issued May 7, 2020); *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *James T. Johnson*, 39 ECAB 1252 (1988).

¹⁴ *E.K.*, *supra* note 7.

¹⁵ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 15, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board